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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

APR - 2 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Expanded Interconnection with)	CC Docket No. 91-141
Local Telephone Company Facilities)	
)	
Amendment of the Part 69 Allocation)	CC Docket No. <u>92-222</u>
of General Support Facilities Costs)	

OPPOSITION

BellSouth Telecommunications Inc. ("BellSouth") hereby submits its Opposition to MFS' Emergency Petition To Hold Proceedings in Abeyance.

On March 23, 1993, MFS filed its petition requesting that the Commission hold in abeyance its review of the LEC's zone pricing plans and postpone any decision on reallocating general support facilities costs until it completes an investigation of LEC "volume and term discounts". MFS' petition should be denied. MFS makes a series of spurious claims which amount to nothing more than yet another thinly veiled attempt to game the regulatory process and obtain special protections from the Commission.

The essence of MFS' position is the unsubstantiated assertion that existing volume and term plan rates are set at discriminatory and predatory levels. First, it is incorrect to characterize BellSouth's high capacity offerings as involving volume discounts. BellSouth offers

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four different DS3 offerings, Lightgate 1,2,3,and 4.¹ Each of these services provide a different capacity to the customer. The customer pays for the full capacity of the service irrespective of whether he activates any DS3 channels. Different equipment, with different costs, are necessary to provide these services.

Nevertheless, regardless of whether these DS3 offerings are viewed as volume discounts, there is no substance to claims that either they or the term discount plans are unjustified. BellSouth's Lightgate filing was made in July, 1992 and only went into effect in October, 1992. In addition to establishing the four Lightgate offerings, the filing introduced term plans for each of these offerings. The filing was accompanied by cost data which showed that the prices for each offering and for each term plan were well above incremental costs. These cost data also showed the significant cost differences among the four different Lightgate offerings.

Less than six months ago, the Common Carrier Bureau concluded that there was no basis for an investigation of the Lightgate rates. MFS has offered nothing in its petition to demonstrate that circumstances have changed so as to warrant such a proceeding.

¹ Lightgate 1, 2, 3 and 4 provide maximum capacities of 1 DS3, 3 DS3s, 12 DS3s and 24 DS3s, respectively.

Likewise with respect to DS1 services, BellSouth only filed its term plan in February, 1993. The filing was unopposed and became effective in March. Accompanying the filing were cost data which showed that rates for each term were well above incremental cost.

MFS did not file a petition against BellSouth's DS1 filing. Having failed to avail itself of that opportunity, it is inappropriate for MFS now to suggest some massive investigatory proceeding must be launched to consider these term rates. Even more egregious is MFS' notion that the Commission should hold the zone pricing plans and the GSF cost reallocation hostage until such a proceeding is concluded.

MFS' claim that zone pricing and the reallocation of GSF costs would enable LECs, including BellSouth, to reduce prices below cost is simply wrong.² BellSouth showed in its Lightgate filing that under the longest term plan available (ten years), Lightgate 3 system rates, for example, are over

² Indeed, it is difficult to fathom MFS's argument regarding GSF reallocation. GSF costs were identified by the Commission as a subsidy that LEC special access rates have been bearing. In requesting that the Commission postpone its GSF decision, MFS in effect argues that LEC special access rates should continue to shoulder this subsidy. MFS views this outcome as procompetitive. While such an outcome is pro-MFS or pro-CAP, it is hardly procompetitive. If the Commission fails to act expeditiously on the reallocation of GSF, then, as recognized in the Expanded Interconnection Order, it would be appropriate to establish a contribution charge to recover this subsidy amount not only from users of special access but from interconnectors as well.

47 percent greater than the incremental costs. Under the two year term plan,³ the Lightgate 3 system rates are over 67 percent greater than incremental costs.⁴ In its DS1 term plan filing, BellSouth showed that under the longest term plan available, DS1 rates were over 43 percent greater than incremental costs. Hence, even if, as MFS believes, that zone pricing and the GSF reallocation would enable a 20 percent price reduction, such a reduction (if taken) would still result in rates which exceed costs.

MFS cannot disguise its motives by wrapping itself in the rhetoric of competition. In asking the Commission to delay zone pricing or the GSF reallocation, it is doing nothing more than requesting the Commission to protect certain competitors from competition.

MFS claims that it cannot imagine "any step that would be more inimical to the pro-competitive goals of the Order than" permitting zone pricing. BellSouth suggests that there is a scenario with far worse consequences--granting MFS's petition. When the Commission's regulatory process treats competitors differently, it invites those not subjected to regulatory scrutiny to use the regulatory process to gain a competitive advantage and forestall meaningful competition. During the comment phase of CC

³ To the extent DS3 customers have elected to subscribe to a term plan, most have chosen a two year plan.

⁴ the same cost/price relationships held true for

Docket 91-141, the potential for this type of conduct was identified by BellSouth. This petition is an example of such conduct. If the Commission fails to reject this type of specious petition, it will encourage regulatory gamesmanship. The Commission should send a clear signal now and deny MFS's petition.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

William B. Barfield


Richard M. Sbaratta

DATE: April 2, 1993

CERTIFICATE OF SERVICE

I, Sheila Bonner, hereby certify that I have on this 2nd day of April, 1993 serviced the following party to this action with a copy of the foregoing OPPOSITION by placing a true and correct copy of same in the United States mail, postage prepaid:

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